

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**JOSIAH KIMUTAI CHUMBA,**

**Plaintiff,**

**v.**

**TIFFANY KIEHL and MIDAMERICA  
REHABILITATION HOSPITAL,**

**Defendants.**

**Case No. 20-2513-DDC-JPO  
\*SEALED\***

**MEMORANDUM AND ORDER**

This matter is before the court on the United States' Motion to Reconsider (Doc. 14). The United States requests the court reconsider the February 10, 2021 Order (Doc. 10) to the extent that this Order directs the *pro se* plaintiff to serve his Amended Complaint and summons on each defendant in this matter. The court agrees with the United States that this action, being one based on the *qui tam* provisions in the False Claims Act, 31 U.S.C. § 3729, provides a basis for approving their request. The court explains its reasoning, below.

In October 2020, the Court entered a show cause order requiring plaintiff to show cause why his action shouldn't be dismissed for lack of subject matter jurisdiction (Doc. 3). On January 19, 2021, plaintiff filed an Amended Complaint alleging retaliation claims and claims under the False Claims Act, 31 U.S.C. § 3729 (Doc. 9). In February 2021, the Court entered an order allowing the case to move forward (Doc. 10). The Court also directed plaintiff to ask the clerk's office to issue summonses and serve them upon defendants on or before April 19, 2021. *Id.* at 3.

On March 24, 2021, plaintiff filed a motion to seal this case (Doc. 12). On March 25, 2021, United States Magistrate Judge O'Hara granted his request (Doc. 13). Magistrate Judge O'Hara reasoned: "It appears, based on the amended complaint, plaintiff's motion to seal, and plaintiff's communications with the clerk's office, he intends to bring the action pursuant to the *qui tam* provisions of the False Claims Act." *Id.* at 1. Accordingly, Magistrate Judge O'Hara directed the clerk to seal the case "to comport with this court's practices for *qui tam* actions." *Id.*

More specifically, the False Claims Act provides that, in actions brought by private persons, the "complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on defendant until the Court so orders." 31 U.S.C. § 3730(b)(2). Here, the United States reports that plaintiff hasn't served them with a copy of his Amended Complaint, but, "as a real party in interest, the United States respectfully requests that the defendants not be served until the United States notifies the Court whether it intends to intervene in this action pursuant to 31 U.S.C. § 3730(b)(4)." Doc. 14 at 1. Reason being, "the matter is proceeding under the False Claims Act *qui tam* provisions, [so] the pleadings should be sealed and defendants not served until the United States is served, [and] has sufficient time to investigate the allegations in the Amended Complaint" so that it may determine "whether to intervene in this action." *Id.* at 2.

The court finds the United States' request to be well-taken and well-reasoned. This matter is based on the *qui tam* provisions of the False Claims Act, and so, the United States should receive an opportunity to investigate the allegations in plaintiff's Amended Complaint to determine whether intervention is appropriate. *See id.* ("The United States then may elect to proceed with the action, 31 U.S.C. § 3730(b)(4)(A); or notify the court that the United States declines to take over the action[,], 31 U.S.C. § 3730(b)(4)(B).").

However, the court also notes that—before the United States submitted its Motion—a notice of summonses was issued to plaintiff, and docketed in this matter, on April 1, 2021. So, if plaintiff already has served a copy of his Amended Complaint and a summons upon each defendant, this Order doesn’t nullify that service.

**IT IS THEREFORE ORDERED BY THE COURT THAT** the United States’ Motion to Reconsider (Doc. 14) is granted.

**IT IS FURTHER ORDERED BY THE COURT THAT** plaintiff shall not serve the Amended Complaint and summonses on defendants until further order of the Court.

**IT IS SO ORDERED.**

**Dated this 6th day of April 2021, at Kansas City, Kansas.**

**s/ Daniel D. Crabtree**  
**Daniel D. Crabtree**  
**United States District Judge**